

ORIGINAL
DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters ("NAB")^{1/} hereby submits its reply comments in the above-captioned proceeding with regard to the Children's Television rules.

NAB filed extensive initial comments responding to the Commission's Notice of Inquiry^{2/} in this proceeding. On reply, however, NAB files only brief comments on a number of specific points raised by others in their initial filings. We file such limited replies because we believe that the issues for the Commission's consideration have been clearly briefed in the many initial comments, including NAB's, and that the overarching issue for the Commission's determination requires no further reargument.

That overarching issue is whether the Commission should now abandon the scheme set up by Congress to require and stimulate educational and informational

^{1/} NAB is a nonprofit, incorporated association which serves and represents America's radio and television broadcast stations and networks.

^{2/} Notice of Inquiry in MM Docket No. 93-48, 8 FCC Rcd 1841 (1993).

No. of Copies rec'd
List A B C D E

[Handwritten signature]

television programming for children and adopt, instead, a rigid quantified requirement -- or whether it should give stations and the production community the opportunity to produce and present the intended programming under the specific but unquantified scheme established by Congress and implemented by the Commission.

NAB here reasserts its position, presented at length in our initial comments, that it is premature for the Commission to abandon the carefully crafted Congressional scheme and to put in its place quantified programming requirements and restrictive definitions. As we and many other broadcast parties said in initial comments, new educational and informational programming is just now coming available, and broadcasters are including the new offerings in their schedules in growing amounts.^{3/} We and others have reminded the Commission that its review of renewal applications has been only of programming presented in the first year and a quarter under the Act, and that it takes some real amount of time to create, produce and market attractive children's programming and then have it fit into broadcast schedules.^{4/}

As we and others have reminded the Commission, it cannot be doubted by reference to the Congressional floor debates on adoption of the Children's Television Act that Congress intended a regulatory plan that deferred to a great extent

^{3/} See, e.g., Comments of CBS Inc. at 9 et seq.; Comments of National Broadcasting Company, Inc. ("NBC") at 11 et seq.

^{4/} See, e.g., Joint Comments of Dow Lohnes & Albertson, et al., at 3, 4.

to the good faith judgments of broadcasters as to the amount and mix of programming to present in service of children and in compliance with their obligations under the Act.^{5/} It intended flexibility and discretion.

Yet there were many commenters who urged the Commission to remove this flexibility and discretion in favor of a scheme of specific definitions and quantified (at high levels) programming requirements because, they claim, broadcasters are not complying with the Act.^{6/} But those who so claimed did so on the basis of early evaluations of compliance,^{7/} and on the basis of generalizations and overstatements.^{8/}

^{5/} See, e.g., Joint Comments of Dow Lohnes & Albertson, et al., at 6, 7, 10, 11; Comments of Hogan & Hartson on behalf of 36 Television Stations at 3, 4.

^{6/} See Comments of Center for Media Education, et al., in MM Docket 93-48, May 7, 1993; Comments of American Academy of Pediatrics, MM Dkt. No. 93-48, May 7, 1993; Comments of American Psychological Association, MM Dkt. No. 93-48, May 7, 1993; Revised Comments of National Association for the Education of Young Children, MM Dkt. No. 93-48, May 5, 1993; Comments of New York State Board of Regents and Thomas Sobol, MM Dkt. No. 93-48, Apr. 23, 1993; Comments of the United States Catholic Conference, MM Dkt. No. 93-48, May 7, 1993.

^{7/} The Comments of the Center for Media Education, et al. base their conclusions on review of renewal applications where the listed programming was presented during the first three months under the new programming requirement. Another study submitted with the Comments of Dr. Dale Kunkel reviewed programming presented during the first year of the Act's requirements.

^{8/} The study relied on in the CME, et al. Comments often generalized from the responses of "many stations" to characterizations about the entire industry. Similarly, that study overstates its case by, for example, suggesting that stations that included in their listings programs with questionable educational content were relying on those programs alone for compliance with the Act. In fact, as NAB's initial Comments (at 20) pointed out, those same listings contained programming of solid educational and informational merit.

The study described in the Comments of Dr. Dale Kunkel can be seen more as a criticism of how broadcasters reported their programming and of over-inclusiveness rather than as a finding of an absence of "specifically designed" programming.

And, importantly, many of these commenters have not arrived at their conclusions afresh. Rather, many of them have all along advocated that high levels of quantified educational and informational children's programming be required of every broadcaster. One well could expect that most of these commenters would advocate this position irrespective of the good faith responses of broadcasters to the Act.

Thus the major issue for the Commission's consideration is well framed. That is: should the Commission defer proposing a quantified scheme, waiting for a longer view of licensees' performances, with new program availabilities and with reinforced emphasis of the Commission's expectations, or should the Commission now, after only limited and early evaluation, move to quantification of the children's programming requirement.

NAB notes that an important broadcaster organization, INTV, and an important and highly regarded group broadcaster, Tribune Broadcasting Company, have suggested that the Commission propose a "safe harbor" quantified processing guideline.^{2/} NAB appreciates their position and their desire for some certainty as to the Commission's expectations and some surety as to license renewal. But NAB believes that the goals of the Act will not best be achieved by reducing broadcasters' obligation to a focus on numbers, which surely will result from quantification. We also believe that a quantified programming requirement, whether by rule, processing guideline or policy statement, compromises broadcasters' independent programming

^{2/} Comments of Association of Independent Televisions, Inc., MM Dkt. No. 93-48, May 7, 1993; Comments of The Tribune Broadcasting Company, MM Dkt. No. 93-48, May 7, 1993.

judgments and impinges too clearly on broadcasters' First Amendment rights. We believe that, in this situation, some uncertainty is the price broadcasters pay to retain a degree of independence from government scrutiny and control of content.

We do agree with many points made by both INTV and Tribune and by others and wish to reemphasize NAB's position with regard to a number of specifics addressed in the Notice and in the comments.

First, the many commenting broadcasters strongly argued that it would be a mistake for the Commission to de-emphasize the presentation of short segment programming by according it "secondary" status with regard to compliance with the Act.^{10/} These broadcasters emphasized the value, effectiveness and reach of short messages and vignettes, and the fact that local stations here can have an input otherwise not affordable. And they made the point that presentation of this valuable format surely will be reduced and de-emphasized by stations if credit for compliance with the Act is restricted to standard-length programming. The Commission has already made

^{10/} Comments of Act III Broadcasting, Inc., MM Dkt. No. 93-48, May 7, 1993 at 9; Comments of Associate Broadcasters, Inc. and Galloway Media, Inc., MM Dkt. No. 93-48, May 7, 1993 at 3; Comments of Association of Independent Televisions, Inc., MM Dkt. No. 93-48, May 7, 1993 at 10; Comments of Capital Cities/ABC, Inc., MM Dkt. No. 93-48, May 7, 1993 at 2; Comments of CBS Inc., MM Dkt. No. 93-48, May 7, 1993 at 6, 7; Joint Comments of Dow, Lohnes & Albertson, et al., MM Dkt. No. 93-48, May 7, 1993 at 16; Comments of Duhamel Broadcasting Enterprises, MM Dkt. No. 93-48, May 7, 1993 at 2; Comments of Fisher, Wayland, Cooper and Leader on behalf of Named Stated Broadcasters Associations, MM Dkt. No. 93-48, May 7, 1993 at 9; Comments of Fox Children's Network, MM Dkt. No. 93-48, May 7, 1993 at 7; Comments of Hogan & Hartson on behalf of 36 Television Stations, MM Dkt. No. 93-48, May 7, 1993 at 9; Comments of National Broadcasting Company, MM Dkt. No. 93-48, May 7, 1993 at 33; Comments of Tribune Broadcasting Company, MM Dkt. No. 93-48, May 7, 1993 at 7; Comments of WTTE, Channel 28 Licensee, Inc., MM Dkt. No. 93-48, May 7, 1993 at 4.

it clear that some standard-length educational and informational children's programming is indeed necessary to comply with the Act.^{11/} Broadcasters are not arguing otherwise. But broadcasters should be encouraged to supplement their standard length shows with these short segments, not discouraged from presenting valuable, effective messages that can be repeated and reinforced and placed in and around highly watched entertainment shows. Broadcasters' service to children under the Act should be aimed at reaching as many children as possible, not just those children who will watch a standard length educational show.

Second, the commenting broadcasters roundly criticized the Commission's suggestion to redefine "educational and informational" programming so as to relegate an intention to entertain to only a secondary goal.^{12/} Broadcasters, as programmers whose business it is to gauge what shows audiences will watch, have asserted that an "educational" show must be both entertaining and educational/

^{11/} Memorandum Opinion and Order in MM Docket No. 90-570, 6 FCC Rcd 5093, at ¶ 41,42 (1991).

^{12/} Comments of Act III Broadcasting, Inc., MM Dkt. No. 93-48, May 7, 1993 at 6; Comments of Associate Broadcasters, Inc. and Galloway Media, Inc., MM Dkt. No. 93-48, May 7, 1993 at 7; Comments of Association of Independent Televisions, Inc., MM Dkt. No. 93-48, May 7, 1993 at 11; Comments of Capital Cities/ABC, Inc., MM Dkt. No. 93-48, May 7, 1993 at 8; Comments of CBS Inc., MM Dkt. No. 93-48, May 7, 1993 at 29; Joint Comments of Dow, Lohnes & Albertson, et al., MM Dkt. No. 93-48, May 7, 1993 at 11; Comments of Duhamel Broadcasting Enterprises, MM Dkt. No. 93-48, May 7, 1993 at 5; Comments of Fisher, Wayland, Cooper and Leader on behalf of Named Stated Broadcasters Associations, MM Dkt. No. 93-48, May 7, 1993 at 9; Comments of Fox Children's Network, MM Dkt. No. 93-48, May 7, 1993 at 10; Comments of Hogan & Hartson on behalf of 36 Television Stations, MM Dkt. No. 93-48, May 7, 1993 at 12; Comments of National Broadcasting Company, MM Dkt. No. 93-48, May 7, 1993 at 25; Comments of Tribune Broadcasting Company, MM Dkt. No. 93-48, May 7, 1993 at 6.

informational for children to either watch or learn. They assert that it is a false dichotomy to separate education and entertainment value.^{13/}

They also assert that the Commission's making such judgments would involve the Commission too deeply in impermissible judgments about program content,^{14/} and would contravene the intentions of Congress with regard to a broad meaning of "educational" and the nature of qualifying shows.^{15/} NAB agrees and reasserts its position that broadcasters have no problem making the "reasonable programming judgments" as to what programming can serve to satisfy their "core" programming obligation.

NAB notes that the commenting broadcasters also pointed out that entertainment programs simply with "wrap around" pro-social messages cannot be relied on in satisfaction of the "core" programming obligation.^{16/}

Third, NAB echoes the commenting broadcasters as to the clear inappropriateness and intrusiveness of the Commission's interesting itself in the scheduling of programming presented to comply with the Act.^{17/} Rather than trying, in advance and as a general matter, to substitute its scheduling preferences for

^{13/} See, e.g., Comments of National Broadcasting Company at 30 *et seq.* See also, Comments of the Walt Disney Company.

^{14/} See, eg., Comments of Tribune Broadcasting Company at 6.

^{15/} See, eg., Comments of CBS Inc. at 30-33.

^{16/} See, eg., Comments of Capital Cities/ABC, Inc. at 11; Comments of CBS Inc. at 7.

^{17/} See, eg., Comments of Tribune Broadcasting Company at 9, 10; Comments of Capital Cities/ABC at 18, 19.

broadcasters' programming decisions as to day of the week and daypart, the Commission should require substantiation of a broadcaster of a questionable time slot.

Finally, NAB replies generally to those commenters^{18/} who would see the Commission adopt a structured system quantifying the amount of specifically defined "educational and informational" programming that each broadcaster must present in response to the Act. The Commission, we believe, understands, as did the

Children's Network that "both qualitative and quantitative standards will have the effect of homogenizing children's television."^{20/}

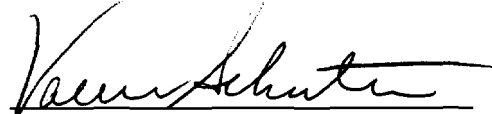
NAB believes that the Congress intended much more to come of the Children's Television Act than that, and NAB respectfully urges the Commission to allow broadcasters and the production community the time to see the potential of the Act to flower into new and creative offerings for children.

Respectfully submitted,

NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036



Henry L. Baumann
Executive Vice President &
General Counsel



Valerie Schulte
Sr. Associate General Counsel

June 7, 1993

^{20/} Comments of Fox Children's Network, at 10.